IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 30TH JANUARY 2007 / 10TH MAGHA 1928

RSA.No. 1093 of 2006()
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AS.110/2003 of SUB COURT, TIRUR
OS.127/2002 of M.C.,PARAPPANANGADI
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APPELLANT IN R.S.A/RESPONDENT IN A.S/DEFENDANT IN O.S
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POTTAYILTHODI VEETTIL CHANDRASEKHARAN,
AGED 48 YEARS, S/O.KARAYAMMAL KARAPPAN,
PUTHUKODE DESOM, ERNAD TALUK.

BY ADV. SRI.S.V.BALAKRISHNA IYER (SR.)
SRI.K.JAYAKUMAR
SRI.P.B.KRISHNAN
SRI.HARISH R. MENON

RESPONDENT IN R.S.A./APPELLANT IN A.S./PLAINTIFF O.S
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NARANGAYIL ARAVINDAKSHAN,
S/O.RAMAN, AGED 36, RESIDING AT AZHINHILAM
AMSOM, PUTHUKODE DESOM, ERNAD TALUK.

BY ADV. SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 30/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.NO. 2622/06 IN RSA 1093/06

DISMISSED

30/1/2007

SD/-M.SASIDHARAN NAMBIAR,JUDGE.

//True copy//

SHW to Judge.

**M.SASIDHARAN NAMBIAR,J.**

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R.S.A .NO.1093 OF 2006

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Dated 30th January 2007

**J U D G M E N T**

Appellant is the defendant and respondent the plaintiff in O.S.127/02 on the file of Munsiff court, Parappanangadi. Respondent instituted the suit for realisation of the amount due under Ext.A1 promissory note dated 26/1/2002 for Rs.38,000/- with interest. Appellant in the written statement denied execution of Ext.A1. Learned Munsiff framed necessary issues. Respondent was examined as PW1 and appellant as DW1. On the side of respondent Ext.A1 promissory note was marked and on the side of appellant, Ext.B1 lawyer notice sent by respondent and Ext.B2 reply notice were marked. Learned Munsiff on the evidence dismissed the suit holding that respondent did not succeed in establishing execution of Ext.A1. Respondent challenged the decree and judgment before Sub court, Tirur in A.S.110/2003. Learned Sub Judge after re-appreciation of evidence and elaborate discussion of the findings of learned Munsiff and

evidence reversed the finding and granted a decree for realisation of the amount. It is challenged in the second appeal.

2. Learned counsel appearing for appellant was heard.

3. According to appellant the substantial question of law which arises for consideration in the appeal is whether appellate court was correct in relying on a case which was not set up in the plaint. According to learned counsel, in the plaint respondent did not specifically plead that Rs.2,000/- was borrowed in addition to Rs.38,000/- borrowed under Ext.A1 and that a cheque was issued for the amount due under the promissory note as security and therefore learned Sub Judge should not have interfered with the decree and judgment passed by learned Munsiff.

4. Learned Sub Jude has elaborately discussed the evidence and found that appreciation of evidence by learned Munsiff was not proper. Though it was contended that in Ext.B1 lawyer notice, respondent did not contend that cheque was issued as security for the amount due under promissory note, as rightly found by learned Sub Judge that notice was sent in compliance with the mandatory provisions of Section 138 of

Negotiable Instruments Act and in such a notice it is not necessary to give details of antecedent debt. Learned Sub Judge has given cogent reasons for accepting the evidence of PW1 and rejecting the evidence of DW1. Though it was contended that learned Sub Judge should not have accepted a new case which was set up in the plaint on going through the judgment I cannot agree with the submission that a new case has been accepted. In any event there is no substantial question of law much less the question of law. As held by Apex court in **K.D.Kadam v. Savitribai Sopan Gujar (1999 (3) SCC 722)** mere appreciation of evidence or facts is not a substantial question of law. First appellate court is competent to reappreciate the facts and evidence. Learned Sub Judge correctly appreciated the evidence and reversed the findings of the Munsiff giving cogent and sufficient reasons. It cannot be interfered in the appeal.

Appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.